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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STEVEN B. BARGER, an individual

Plaintiff

v.

FIRST DATA CORPORATION et al.

Defendants.

Case No. 1:17-cv-4869-FB-LB

**REPLY IN SUPPORT OF PLAINTIFF'S
MOTION TO EXPEDITE/SHORTEN TIME –
FOR PLAINTIFF'S 72(a) OBJECTION**

(Assigned to the Honorable Frederic Block)

**PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO EXPEDITE/SHORTEN
TIME FOR 72(a) OBJECTION**

Plaintiff Steven B. Barger (“Plaintiff”) respectfully submits this Reply in Support of Plaintiff’s Motion to Expedite/Shorten Time for Rule 72(a) Objection and, as grounds therefore, states as follow.

1. On August 17, 2018, by minute entry order, Magistrate Judge Bloom granted Defendants’ Motion for Extension of Time to Complete Discovery [ECF 54] and the parties were ordered to complete all fact and expert discovery by September 28, 2018 instead of the previously ordered August 31, 2018.
2. On August 22, 2018, Plaintiff filed its Second Motion to Compel 30(b)(6) Designation and Deposition [ECF 55] (“Motion to Compel”).

3. On September 4, 2018, after hearing, by minute entry order, Magistrate Bloom denied the Motion to Compel.

4. Over the course of the next nine days, including a three day drive from New York to Dallas to save Plaintiff cost and expense of travel, Plaintiff's counsel, a solo practitioner with no associates, managed to prepare and file, as described in Defendant's Opposition [ECF 68], a filing that "consists of a 25 page motion, with 25 footnotes and 130 additional pages of exhibit."

5. Defense counsel, the law firm of Saul Ewing Arnstein & Lehr, has 17 offices in the United States and approximately 800 lawyers. With all due respect to Mr. Eidelman's religious observances, there are at least 799 other lawyers at Saul Ewing that can complete the task of preparing an opposition to Plaintiff's Rule 72(a) Motion timely to complete fact discovery by September 28th as ordered.

6. Defendant's position is also inconsistent with their position taken in the Southern District of Ohio in this case. Defendant's filed a motion to compel a third-party witness, appearing pro se, in the Southern District of Ohio. (18:1-mc-00010). In response, the third-party witness filed a motion for sanctions against Defendants. On the 14th day after the filing of that motion for sanctions, Defendants had not responded to the motion for sanctions, and the third-party witness filed requesting entry of sanctions as unopposed. The local rules of the Southern District of Ohio require oppositions to be filed 21 days after the motion and Defendants cited this local rule and waited the entire 21 days to file their opposition to the sanctions. And, contemporaneously with that opposition, Defendants requested a motion to expedite the third-party, pro se, reply to THREE DAYS from the 14 days allowed under the local rules. This was a pro se, third-party that receives service by mail. The motion to expedite was not even received by the third-party witness prior to the deadline requested in the Motion to Expedite. The Southern District of Ohio

rightly noticed this problem and partially granted the motion to expedite, but with a seven day reply requirement in lieu of the 14 days provided under the local rules. If Defendants are willing without any qualms to try to expedite a third-party, pro se, reply from 14 days under the local rules to 3 days (after Defendants took advantage of the full 21 days to file an opposition under the local rules), then a firm of 800 lawyers has the capacity to respond to Plaintiff's Rule 72(a) Motion over the course of 7 days as requested in the Motion to Expedite. [See Exhibit A]

7. Discovery in this case has been open since January. Defendants were well aware of the high-holiday schedule at that time. During discovery, nearly 6-weeks went by with Defendants and their counsel doing absolutely nothing to move forward with deposition testimony (mid-March to April). If Defense counsel observes these high holidays, then Defense counsel should plan its discovery conduct accordingly. Defense counsel did not do so, wasted numerous weeks, and now seeks to avoid a motion to expedite (not different than the one the defense filed in the Southern District of Ohio) because of a religious observance when there are 799 other lawyers capable of handling the response, and certainly not all 799 are observant of these holidays.

8. Plaintiff has requested the expedition in order to complete discovery by the September 28, 2018 deadline set by Magistrate Bloom.

9. The 30(b)(6) topics and deposition notice have been outstanding, unobjected to, and with no protective order filings, since May 22, 2018 – four months ago. Defendants have had plenty of time to designate and coordinate depositions. The Motion to expedite briefing of the 72(a) Motion is justified under the circumstances of a September 28th fact discovery cut-off (a cut-off that has already been extended by a month by motion of the Defendants).

10. A solo practitioner completed the 72(a) in 9-days. A firm the size of Saul Ewing can certainly complete the Opposition within 7-days regardless of the religious observances of Mr.

Eidelman.

11. Accordingly, the Plaintiff requests that any opposition to the 72(a) be ordered to be filed by Friday, September 21, 2018, and order that Plaintiff's reply be filed by Monday, September 24, 2018, and any resulting ordered 30(b)(6) depositions to be completed on September 27th and/or 28th in Brooklyn, New York.

Respectfully Submitted,

THE LAW OFFICE OF SHAWN SHEARER, P.C.

/s/ Shawn Shearer
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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2018, I transmitted the attached Motion to Expedite/Shorten Time - Rule 72(a) Objection [ECF 64] to the following CM/ECF registrants via e-mail to each of their CM/ECF registered e-mail addresses.

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